



EX PARTE OR LATE FILED

October 7, 1996

DOCKET FILE COPY ORIGINAL

RECEIVED

OCT 17 1996

Federal Communications Commission
Office of Secretary

EX PARTE

ORIGINAL

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation -- WT Docket No. 95-157

Microwave Relocation and Cost Sharing

Dear Mr. Caton:

Representatives of NextWave met on October 17, 1996, with Karen Brinkmann of the Wireless Telecommunications Bureau, to discuss issues in the above-referenced proceeding. The views expressed are summarized in the attachment to this filing.

NextWave Telecom Inc.

In accordance with Section 1.1206 of the Commission's rules, and original and two copies of this filing are being submitted to you today.

Sincerely,

Charla M. Rath
Vice President - Strategic Affiliations

Attachment

cc: Karen Brinkmann

October 15, 1996

Michele Farquhar
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

Re: WT Docket No 95-157

In the Matter of Amendment of the Commission's Rules Regarding a Plan for Sharing
the Costs of Microwave Relocation

Dear Ms. Farquhar:

The Commission and the Wireless Telecommunications Bureau have expended considerable effort to remove barriers to small and entrepreneurial companies' participation in the wireless industry. We greatly appreciate those efforts and are here to tell you that C block winners, including the companies that have signed this letter, are serious about building out their networks. It is with the intent of bringing service rapidly to the American public that we call to your attention an ambiguity in FCC microwave relocation rules that could undermine these efforts.

To ensure rapid PCS service to the public, you have crafted microwave relocation rules that are designed to be responsive to the concerns of PCS licensees and microwave incumbents in the 2 GHz band. As you know, as part of the process outlined in its rules, the Commission announced in May that C block winning bidders could begin the process of microwave relocation.^{1/} Many C blocks winners have begun the process of clearing their frequencies of microwave incumbents. However, as a result of C block bidders beginning this process of microwave relocation more than a year behind the A and B block licensees, we have identified areas of the Commission's rules that remain ambiguous and are potentially harmful to all later PCS entrants. The C block companies that have signed this letter join in asking the Bureau to clarify the Commission's rules, particularly with regard to required information sharing.

The Commission's rules create an incentive for PCS entrants to relocate whole microwave systems (including links outside a PCS entrant's band) by enabling a relocater to share the costs of relocation with other PCS companies that benefit from the relocation. Unfortunately, there is a significant ambiguity in the rules that is a source of potential abuse. We are asking that the Bureau clarify this ambiguity as soon as possible.

^{1/} *Wireless Telecommunications Bureau Announces Commencement of the Voluntary Negotiation Period for 2 GHz Microwave Incumbents Operating in the Broadband PCS "C" Block*, Public Notice (rel. May 24, 1996).

Michele Farquhar
October 16, 1996
Page 2

As presently written, the rules inherently imply -- but do not expressly require -- that a PCS relocater must inform other PCS entrants of its relocation agreements when such agreements clearly affect incumbent operations in those other PCS entrants' bands. We are concerned that if such information can be withheld, the negotiations process for those other PCS entrants will be distorted substantially. Particularly during the voluntary negotiations period, when incumbents are not required to negotiate in good faith, those late entrants would have no means of identifying who they need to negotiate with, much less the reasonable parameters of such negotiations. Instead, they will be forced to expend valuable time and funds pursuing negotiations with everyone, even incumbents that already have agreed to relocate. Furthermore, even if the identity of the incumbents that have signed agreements is known, it is critical to our network buildout that we know the decommission dates of specific microwave links. This irrational state of affairs could extend indefinitely if relocation agreements are allowed to contain overly restrictive nondisclosure provisions.

In order to avert this needless and wasteful expense, and to keep the relocation negotiations process from becoming a shell game, the Commission must explicitly require information about relocation agreements to be made available to any affected PCS company upon reasonable request. One way to accomplish this is to clarify that Section 24.245 of the Commission's rules:

- requires all PCS relocators to submit documentation of each relocation agreement to both Commission-selected cost-sharing clearinghouses within ten days of the signing of such agreement -- regardless of the relocators' plans to pursue cost-sharing at a later time;
- authorizes other affected PCS licensees to access such information, in particular the decommission dates on specific microwave links, subject to appropriate rules concerning its confidential treatment; and
- bans provisions in relocation contracts that would restrict the availability of such information to affected PCS licensees.

We believe that such a clarification is a natural outgrowth of the Commission's decisions and discussions in the April 30, 1996 Report and Order and Further Notice of Proposed Rule Making,^{2/} and that the Bureau is well within its authority to clarify the Commission's rules.

We appreciate that there are considerable demands on your time, but must stress that this issue is critical to us. We strongly encourage you to act quickly on clarifying that the information described above should be shared. Such clarification is necessary to end the

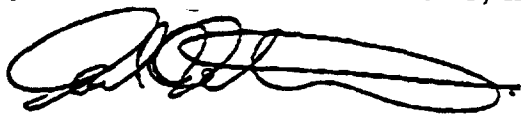
^{2/} *Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, First Report and Order and Further Notice of Proposed Rule Making (rel. Apr. 30, 1996)

Michele Farquhar
October 15, 1996
Page 3

uncertainty and to ensure that C block licensees can begin offering PCS service to the public as soon as possible.

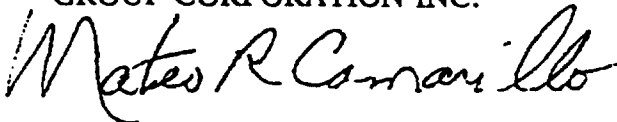
Sincerely,

ARADIGM COMMUNICATIONS, INC.



Carl Artman, President

INTEGRATED COMMUNICATIONS
GROUP CORPORATION INC.



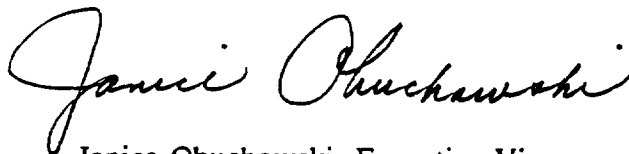
Mateo R. Camarillo, Coordinator

KANSAS PERSONAL
COMMUNICATION SERVICES, LTD.



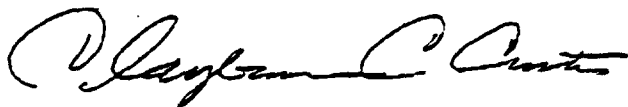
Bertha L. Coffin, President

NEXTWAVE TELECOM INC.



Janice Obuchowski, Executive Vice
President

ONQUE COMMUNICATIONS, INC.



Clayburn C. Curtis, Chairman

PERSONAL COMMUNICATIONS
NETWORK, INC.



Les Winder, Executive Vice President

POCKET COMMUNICATIONS, INC.



Daniel C. Riker, Chairman and CEO

POLYCELL COMMUNICATIONS, INC.



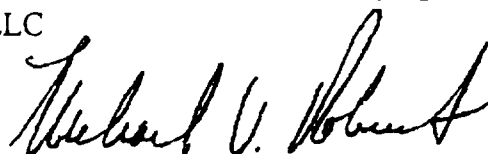
Mark R. Erickson, Operations Manager

RLV-PCS I PARTNERSHIP



Richard L. Vega, Managing Partner

ROBERTS-ROBERTS & ASSOCIATES,
LLC



Michael V. Roberts, Chairman and CEO